

# House Amendment 8546

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1 1 Amend Senate File 2411, as amended, passed, and  
1 2 reprinted by the Senate, as follows:  
1 3 #1. By striking everything after the enacting  
1 4 clause and inserting the following:  
1 5 <Section 1. Section 21.6, subsection 3, paragraph  
1 6 a, subparagraph (3), Code 2007, is amended to read as  
1 7 follows:  
1 8 (3) Reasonably relied upon a decision of a court,  
1 9 ~~or a formal opinion of the Iowa public information~~  
1 10 ~~board, the attorney general, or the attorney for the~~  
1 11 ~~governmental body, given in writing, or as~~  
1 12 ~~memorialized in the minutes of the meeting at which a~~  
1 13 ~~formal oral opinion was given, or an advisory opinion~~  
1 14 ~~of the Iowa public information board, the attorney~~  
1 15 ~~general, or the attorney for the governmental body,~~  
1 16 ~~given in writing.~~  
1 17 Sec. 2. Section 21.6, subsection 3, paragraph d,  
1 18 Code 2007, is amended to read as follows:  
1 19 d. Shall issue an order removing a member of a  
1 20 governmental body from office if that member has  
1 21 engaged in a prior violation of this chapter for which  
1 22 damages were assessed against the member during the  
1 23 member's term. In making this determination, the  
1 24 court shall recognize violations for which damages  
1 25 were assessed by the Iowa public information board  
1 26 created in section 23.3.  
1 27 Sec. 3. Section 22.10, subsection 3, paragraphs b  
1 28 and d, Code 2007, are amended to read as follows:  
1 29 b. Shall assess the persons who participated in  
1 30 its violation damages in the amount of not more than  
1 31 five hundred dollars nor less than one hundred  
1 32 dollars. These damages shall be paid by the court  
1 33 imposing them to the state of Iowa if the body in  
1 34 question is a state government body, or to the local  
1 35 government involved if the body in question is a local  
1 36 government body. A person found to have violated this  
1 37 chapter shall not be assessed such damages if that  
1 38 person proves that the person either voted against the  
1 39 action violating this chapter, refused to participate  
1 40 in the action violating this chapter, or engaged in  
1 41 reasonable efforts under the circumstances to resist  
1 42 or prevent the action in violation of this chapter;  
1 43 had good reason to believe and in good faith believed  
1 44 facts which, if true, would have indicated compliance  
1 45 with the requirements of this chapter; or reasonably  
1 46 relied upon a decision of a court ~~or an a formal~~  
1 47 ~~opinion of the Iowa public information board, the~~  
1 48 ~~attorney general or the attorney for the government~~  
1 49 ~~body, given in writing or as memorialized in the~~  
1 50 ~~minutes of the meeting at which a formal oral opinion~~  
2 1 ~~was given, or an advisory opinion of the Iowa public~~  
2 2 ~~information board, the attorney general, or the~~  
2 3 ~~attorney for the government body, given in writing.~~  
2 4 d. Shall issue an order removing a person from  
2 5 office if that person has engaged in a prior violation  
2 6 of this chapter for which damages were assessed  
2 7 against the person during the person's term. In  
2 8 making this determination, the court shall recognize  
2 9 violations for which damages were assessed by the Iowa  
2 10 public information board created in section 23.3.  
2 11 Sec. 4. NEW SECTION. 23.1 CITATION AND PURPOSE.  
2 12 This chapter may be cited as the "Iowa Public  
2 13 Information Board Act". The purpose of this chapter  
2 14 is to provide an alternative means by which to secure  
2 15 compliance with and enforcement of the requirements of  
2 16 chapters 21 and 22 through the provision by the Iowa  
2 17 public information board to all interested parties of  
2 18 an efficient, informal, and cost-effective process for  
2 19 resolving disputes.  
2 20 Sec. 5. NEW SECTION. 23.2 DEFINITIONS.  
2 21 1. "Board" means the Iowa public information board  
2 22 created in section 23.3.  
2 23 2. "Complainant" means a person who files a  
2 24 complaint with the board.

2 25 3. "Complaint" means a written and signed document  
2 26 filed with the board alleging a violation of chapter  
2 27 21 or 22.

2 28 4. "Custodian" means a government body, government  
2 29 official, or government employee designated as the  
2 30 lawful custodian of a government record pursuant to  
2 31 section 22.1.

2 32 5. "Government body" means the same as defined in  
2 33 section 22.1.

2 34 6. "Person" means an individual, partnership,  
2 35 association, corporation, legal representative,  
2 36 trustee, receiver, custodian, government body, or  
2 37 official, employee, agency, or political subdivision  
2 38 of this state.

2 39 7. "Respondent" means any agency or other unit of  
2 40 state or local government, custodian, government  
2 41 official, or government employee who is the subject of  
2 42 a complaint.

2 43 Sec. 6. NEW SECTION. 23.3 BOARD APPOINTED.

2 44 1. An Iowa public information board is created  
2 45 consisting of five members appointed by the governor,  
2 46 subject to confirmation by the senate. Membership  
2 47 shall be balanced as to political affiliation as  
2 48 provided in section 69.16 and gender as provided in  
2 49 section 69.16A. Members appointed to the board shall  
2 50 serve staggered, four-year terms, beginning and ending  
3 1 as provided by section 69.19. A quorum shall consist  
3 2 of three members.

3 3 2. A vacancy on the board shall be filled by the  
3 4 governor by appointment for the unexpired part of the  
3 5 term. A board member may be removed from office by  
3 6 the governor for good cause. The board shall select  
3 7 one of its members to serve as chair and shall employ  
3 8 a director who shall serve as the executive officer of  
3 9 the board.

3 10 Sec. 7. NEW SECTION. 23.4 COMPENSATION AND  
3 11 EXPENSES.

3 12 Board members shall be paid a per diem as specified  
3 13 in section 7E.6 and shall be reimbursed for actual and  
3 14 necessary expenses incurred while on official board  
3 15 business. Per diem and expenses shall be paid from  
3 16 funds appropriated to the board.

3 17 Sec. 8. NEW SECTION. 23.5 ELECTION OF REMEDIES.

3 18 1. An aggrieved person, any taxpayer to or citizen  
3 19 of this state, the attorney general, or any county  
3 20 attorney may seek enforcement of the requirements of  
3 21 chapters 21 and 22 by electing either to file an  
3 22 action pursuant to section 17A.19, 21.6, or 22.10,  
3 23 whichever is applicable, or in the alternative, to  
3 24 file a timely complaint with the board.

3 25 2. If more than one person seeks enforcement of  
3 26 chapter 21 or 22 with respect to the same incident  
3 27 involving an alleged violation, and one or more of  
3 28 such persons elects to do so by filing an action under  
3 29 section 17A.19, 21.6, or 22.10 and one or more of such  
3 30 persons elects to do so by filing a timely complaint  
3 31 with the board, the court in which the action was  
3 32 filed shall dismiss the action without prejudice,  
3 33 authorizing the complainant to file a complaint with  
3 34 respect to the same incident with the board without  
3 35 regard to the timeliness of the filing of the  
3 36 complaint at the time the action in court is  
3 37 dismissed.

3 38 3. If a person files an action pursuant to section  
3 39 22.8 seeking to enjoin the inspection of a public  
3 40 record, the respondent or person requesting access to  
3 41 the record which is the subject of the request for  
3 42 injunction may remove the proceeding to the board for  
3 43 its determination by filing, within thirty days of the  
3 44 commencement of the judicial proceeding, a complaint  
3 45 with the board alleging a violation of chapter 22 in  
3 46 regard to the same matter.

3 47 Sec. 9. NEW SECTION. 23.6 BOARD POWERS AND  
3 48 DUTIES.

3 49 The board shall have all of the following powers  
3 50 and duties:

4 1 1. Employ such employees as are necessary to  
4 2 execute its authority, including administrative law  
4 3 judges, and attorneys to prosecute respondents in  
4 4 proceedings before the board and to represent the  
4 5 board in proceedings before a court. Notwithstanding

4 6 section 8A.412, all of the board's employees, except  
4 7 for the executive director and attorneys, shall be  
4 8 employed subject to the merit system provisions of  
4 9 chapter 8A, subchapter IV.

4 10 2. Adopt rules with the force of law pursuant to  
4 11 chapter 17A calculated to implement, enforce, and  
4 12 interpret the requirements of chapters 21 and 22 and  
4 13 to implement any authority delegated to the board by  
4 14 this chapter.

4 15 3. Issue, consistent with the requirements of  
4 16 section 17A.9, declaratory orders with the force of  
4 17 law determining the applicability of chapter 21 or 22  
4 18 to specified fact situations and issue informal advice  
4 19 to any person concerning the applicability of chapters  
4 20 21 and 22.

4 21 4. Receive complaints alleging violations of  
4 22 chapter 21 or 22, seek resolution of such complaints  
4 23 through informal assistance or through mediation and  
4 24 settlement, formally investigate such complaints,  
4 25 decide after such an investigation whether there is  
4 26 probable cause to believe a violation of chapter 21 or  
4 27 22 has occurred, and if probable cause has been found  
4 28 prosecute the respondent before the board in a  
4 29 contested case proceeding conducted according to the  
4 30 provisions of chapter 17A.

4 31 5. Request and receive from a government body  
4 32 assistance and information as necessary in the  
4 33 performance of its duties. The board may examine a  
4 34 record of a government body that is the subject matter  
4 35 of a complaint, including any record that is  
4 36 confidential by law. Confidential records provided to  
4 37 the board by a governmental body shall continue to  
4 38 maintain their confidential status. Any member or  
4 39 employee of the board is subject to the same policies  
4 40 and penalties regarding the confidentiality of the  
4 41 document as an employee of the government body.

4 42 6. Issue subpoenas enforceable in court for the  
4 43 purpose of investigating complaints and to facilitate  
4 44 the prosecution and conduct of contested cases before  
4 45 the board.

4 46 7. After appropriate board proceedings, issue  
4 47 orders with the force of law, determining whether  
4 48 there has been a violation of chapter 21 or 22,  
4 49 requiring compliance with specified provisions of  
4 50 those chapters, imposing civil penalties equivalent to  
5 1 and to the same extent as those provided for in  
5 2 section 21.6 or 22.10, as applicable, on a respondent  
5 3 who has been found in violation of chapter 21 or 22,  
5 4 and imposing any other appropriate remedies calculated  
5 5 to declare, terminate, or remediate any violation of  
5 6 those chapters.

5 7 8. Represent itself in judicial proceedings to  
5 8 enforce or defend its orders and rules through  
5 9 attorneys on its own staff, through the office of the  
5 10 attorney general, or through other attorneys retained  
5 11 by the board, at its option.

5 12 9. Make training opportunities available to lawful  
5 13 custodians, government bodies, and other persons  
5 14 subject to the requirements of chapters 21 and 22 and  
5 15 require, in its discretion, appropriate persons who  
5 16 have responsibilities in relation to chapters 21 and  
5 17 22 to receive periodic training approved by the board.

5 18 10. Disseminate information calculated to inform  
5 19 members of the public about the public's right to  
5 20 access government information in this state including  
5 21 procedures to facilitate this access and including  
5 22 information relating to the obligations of government  
5 23 bodies under chapter 21 and lawful custodians under  
5 24 chapter 22 and other laws dealing with this subject.

5 25 11. Prepare and transmit to the governor and to  
5 26 the general assembly, at least annually, reports  
5 27 describing complaints received, board proceedings,  
5 28 investigations, hearings conducted, decisions  
5 29 rendered, and other work performed by the board.

5 30 12. Make recommendations to the general assembly  
5 31 proposing legislation relating to public access to  
5 32 government information deemed desirable by the board  
5 33 in light of the policy of this state to provide as  
5 34 much public access as possible to government  
5 35 information as is consistent with the public interest  
5 36 and the need to protect individuals against undue

5 37 invasions of personal privacy.  
5 38 Sec. 10. NEW SECTION. 23.7 FILING OF COMPLAINTS  
5 39 WITH THE BOARD.

5 40 1. The board shall adopt rules with the force of  
5 41 law and pursuant to chapter 17A providing for the  
5 42 timing, form, content, and means by which any  
5 43 aggrieved person, any taxpayer to or citizen of this  
5 44 state, the attorney general, or any county attorney  
5 45 may file a complaint with the board alleging a  
5 46 violation of chapter 21 or 22. The complaint must be  
5 47 filed within sixty days from the time the alleged  
5 48 violation occurred or the complainant could have  
5 49 become aware of the violation with reasonable  
5 50 diligence.

6 1 2. All board proceedings in response to the filing  
6 2 of a complaint shall be conducted as expeditiously as  
6 3 possible.

6 4 3. The board shall not charge a complainant any  
6 5 fee in relation to the filing of a complaint, the  
6 6 processing of a complaint, or any board proceeding or  
6 7 judicial proceeding resulting from the filing of a  
6 8 complaint.

6 9 Sec. 11. NEW SECTION. 23.8 INITIAL PROCESSING OF  
6 10 COMPLAINT.

6 11 Upon receipt of a complaint alleging a violation of  
6 12 chapter 21 or 22, the board shall do either of the  
6 13 following:

6 14 1. Determine that, on its face, the complaint is  
6 15 within the board's jurisdiction, appears legally  
6 16 sufficient, and could have merit. In such a case the  
6 17 board shall accept the complaint, and shall notify the  
6 18 parties of that fact in writing.

6 19 2. Determine that, on its face, the complaint is  
6 20 outside its jurisdiction, is legally insufficient, is  
6 21 frivolous, is without merit, involves harmless error,  
6 22 or relates to a specific incident that has previously  
6 23 been finally disposed of on its merits by the board or  
6 24 a court. In such a case the board shall decline to  
6 25 accept the complaint. If the board refuses to accept  
6 26 a complaint, the board shall provide the complainant  
6 27 with a written order explaining its reasons for the  
6 28 action.

6 29 Sec. 12. NEW SECTION. 23.9 INFORMAL ASSISTANCE  
6 30 == MEDIATION AND SETTLEMENT.

6 31 1. After accepting a complaint, the board shall  
6 32 promptly work with the parties through its employees  
6 33 to reach an informal, expeditious resolution of the  
6 34 complaint. If an informal resolution satisfactory to  
6 35 the parties cannot be reached, the board or the  
6 36 board's designee shall offer the parties an  
6 37 opportunity to resolve the dispute through mediation  
6 38 and settlement.

6 39 2. The mediation and settlement process shall  
6 40 enable the complainant to attempt to resolve the  
6 41 dispute with the aid of a neutral mediator employed  
6 42 and selected by the board, in its discretion, from  
6 43 either its own staff or an outside source.

6 44 3. Mediation shall be conducted as an informal,  
6 45 nonadversarial process and in a manner calculated to  
6 46 help the parties reach a mutually acceptable and  
6 47 voluntary settlement agreement. The mediator shall  
6 48 assist the parties in identifying issues and shall  
6 49 foster joint problem solving and the exploration of  
6 50 settlement alternatives.

7 1 Sec. 13. NEW SECTION. 23.10 ENFORCEMENT.

7 2 1. If any party declines mediation or settlement  
7 3 or if mediation or settlement fails to resolve the  
7 4 matter to the satisfaction of all parties, the board  
7 5 shall initiate a formal investigation concerning the  
7 6 facts and circumstances set forth in the complaint.  
7 7 The board shall, after an appropriate investigation,  
7 8 make a determination as to whether the complaint is  
7 9 within the board's jurisdiction and whether there is  
7 10 probable cause to believe that the facts and  
7 11 circumstances alleged in the complaint constitute a  
7 12 violation of chapter 21 or 22.

7 13 2. If the board finds the complaint is outside the  
7 14 board's jurisdiction or there is no probable cause to  
7 15 believe there has been a violation of chapter 21 or  
7 16 22, the board shall issue a written order explaining  
7 17 the reasons for the board's conclusions and dismissing

7 18 the complaint, and shall transmit a copy to the  
7 19 complainant and to the party against whom the  
7 20 complaint was filed.

7 21 3. a. If the board finds the complaint is within  
7 22 the board's jurisdiction and there is probable cause  
7 23 to believe there has been a violation of chapter 21 or  
7 24 22, the board shall issue a written order to that  
7 25 effect and shall commence a contested case proceeding  
7 26 under chapter 17A against the respondent. An attorney  
7 27 selected by the director of the board shall prosecute  
7 28 the respondent in the contested case proceeding. At  
7 29 the termination of the contested case proceeding the  
7 30 board shall, by a majority vote of its members, render  
7 31 a final decision as to the merits of the complaint.  
7 32 If the board finds that the complaint has merit, the  
7 33 board may issue any appropriate order to ensure  
7 34 enforcement of chapter 21 or 22 including but not  
7 35 limited to an order requiring specified action or  
7 36 prohibiting specified action and any appropriate order  
7 37 to remedy any failure of the respondent to observe any  
7 38 provision of those chapters.

7 39 b. If the board determines, by a majority vote of  
7 40 its members, that the respondent has violated chapter  
7 41 21 or 22, the board may also do any or all of the  
7 42 following:

7 43 (1) Require the respondent to pay damages as  
7 44 provided for in section 21.6 or 22.10, whichever is  
7 45 applicable, to the extent that provision would make  
7 46 such damages payable if the complainant had sought to  
7 47 enforce a violation in court instead of through the  
7 48 board.

7 49 (2) Void any action taken in violation of chapter  
7 50 21 if a court would be authorized to do so in similar  
8 1 circumstances pursuant to section 21.6.

8 2 c. The board shall not have the authority to  
8 3 remove a person from public office for a violation of  
8 4 chapter 21 or 22. The board may file an action under  
8 5 chapter 21 or 22 to remove a person from office for  
8 6 violations that would subject a person to removal  
8 7 under those chapters.

8 8 d. A final board order resulting from such  
8 9 proceedings may be enforced by the board in court and  
8 10 is subject to judicial review pursuant to section  
8 11 17A.19.

8 12 Sec. 14. NEW SECTION. 23.11 DEFENSES IN A  
8 13 CONTESTED CASE PROCEEDING.

8 14 A respondent may defend against a proceeding before  
8 15 the board charging a violation of chapter 21 or 22 on  
8 16 the ground that if such a violation occurred it was  
8 17 only harmless error or that clear and convincing  
8 18 evidence demonstrated that grounds existed to justify  
8 19 a court to issue an injunction against disclosure  
8 20 pursuant to section 22.8.

8 21 Sec. 15. NEW SECTION. 23.12 JURISDICTION.

8 22 The board shall not have jurisdiction over the  
8 23 judicial or legislative branches of state government  
8 24 or any entity, officer, or employee of those branches,  
8 25 or over the governor or the office of the governor.

8 26 Sec. 16. IOWA PUBLIC INFORMATION BOARD ==  
8 27 TRANSITION PROVISIONS.

8 28 1. The initial members of the Iowa public  
8 29 information board established pursuant to this Act  
8 30 shall be appointed by September 1, 2008.

8 31 2. Notwithstanding any provision of this Act to  
8 32 the contrary, the director of the board and employees  
8 33 of the board shall not be hired prior to July 1, 2009.

8 34 3. Prior to July 1, 2009, the board shall submit a  
8 35 report to the governor and the general assembly. The  
8 36 report shall include a job description for the  
8 37 executive director of the board, goals for board  
8 38 operations, and performance measures to measure  
8 39 achievement of the board's goals.

8 40 Sec. 17. APPROPRIATION == IOWA PUBLIC INFORMATION  
8 41 BOARD. There is appropriated from the general fund of  
8 42 the state to the department of management for the  
8 43 fiscal year beginning July 1, 2008, and ending June  
8 44 30, 2009, the following amount, or so much thereof as  
8 45 is necessary, to be used for the following purpose:

8 46 For the initial expenses of the Iowa public  
8 47 information board as established in this Act:

8 48 ..... \$ 6,000

8 49 Sec. 18. LEGISLATIVE INTENT == OPEN MEETINGS AND  
8 50 PUBLIC RECORDS LAWS. It is the intent of the general  
9 1 assembly to provide as much transparency in government  
9 2 operations as possible consistent with the need to  
9 3 avoid undue invasions of personal privacy and the need  
9 4 to avoid significant interference with the achievement  
9 5 of other important and legitimate state objectives.  
9 6 To these ends, the general assembly will continue to  
9 7 consider and make any necessary technical, practical,  
9 8 and policy revisions to Iowa's open meetings law,  
9 9 chapter 21, and Iowa's public records law, chapter  
9 10 22.>  
9 11 #3. Title page, by striking lines 1 and 2 and  
9 12 inserting the following: <An Act creating an Iowa  
9 13 public information board and making an appropriation.>  
9 14  
9 15  
9 16  
9 17 COMMITTEE ON STATE GOVERNMENT  
9 18 MASCHER of Johnson, Chairperson  
9 19 SF 2411.702 82  
9 20 rh/rj/12529